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MAJORITY OF COURT SHOULD AGREE ON DECISIVE RULINGS.

In 82 Cent. L. J. 277 we discussed "Unnecessary Judicial Opinions," as "Breeder's of Confusion" and we find in *Jones Nat. Bank v. Yates*, 36 Sup. Ct. 429, decided April 3, 1916, remarks by Justice Hughes which seem to give some point to the views we expressed.

There the Supreme Court of Nebraska was reversed and judgment of trial court reinstated on the merits. In so deciding, the learned justice, among other things, said: "It is apparent that there were no findings of fact by the Supreme Court of the state. The actions being at law and trial by jury being waived, the findings of fact made by the trial court—as we understand the local practice—had 'the same force and effect' as the verdict of a jury. * * * But apart from these considerations, findings of fact by the Supreme Court would necessarily require the action of a majority of that court, and it is plain that the opinion of the three judges, unaided by the concurrence of the fourth, could not be regarded as embodying such findings. Justice Letton, whose concurrence in the result made the reversal possible, stated specifically the sole ground of his action, and his statement did not purport to be the resolving of questions of fact. After saying that he was inclined to the view that the evidence would support a 'judgment upon a cause of action at common law for deceit,' and that 'the findings of the district court were 'to that effect,' he added that he was not satisfied that these findings were 'unsustained by the evidence.' He considered the presumption to be that they were 'so sustained,' but he had 'not examined the evidence so critically as would be necessary to determine this,' for the reason that, in view of the holding of this court 'as to the measure of duty and

of liability of directors' under the Federal Act, he thought 'a case had not been made.' 'For that reason alone' he concurred in the conclusion."

The justice then says: "It is manifest that this was simply the expression of an opinion with respect to the legal sufficiency of the plaintiff's case. That is, the decisive ruling—upon which the reversal rested—was that matter of law, applying the Federal statute, the plaintiffs were not entitled to their recovery. And the judgment as entered upon appeal simply set forth that the court finding 'error apparent in the record of the proceedings and judgment' reversed and dismissed."

As we gather this statement, expressions of opinion by judges not supported by a majority of a court are merely personal, and not judicial, opinions and properly have no place in a judicial opinion at all.

As to the harm done in this case it would seem that this judge concurring in the result, if he was unable to agree in the findings of fact by three judges, should have gone with the other three and have affirmed the judgment. To apply a familiar expression, a judge "should either fish or cut bait." By his not going with the three for affirmance of the district court he put upon the plaintiffs the *onus* of prosecuting a writ of error, and, as the result shows, he would have done them serious injury had they not have prosecuted the writ.

We do not care to weary our readers by harping on a single string, but we do feel very strongly, that a great part of the volume of judicial opinions could be reduced, not only to the benefit of all concerned, but that clarity in ruling and the clear boundaries of precedent would the better appear.

There are not many questions that arise, which call for wholly novel principles. The conclusions judges reach are results from their understanding of well-known principles. If one judge is persuaded to the same result as another, but by a wholly dif-

ferent line of thought, is it not better not to state academic reasons? If the reasons are not viewed by another as sound, the decisions lack the force a precedent should have. If the reasons vary, a lawyer may follow one or the other judge or he is even not restrained from getting at the matter independently of the reasons given. How, indeed, will he be able to apply the principle to a different state of facts, if by one judge's view this is admissible and by another's it is not?

Furthermore, it seems to us that reasons are greatly like *obiter dicta*, when there is an announcement which may not work out satisfactorily. The reasons cannot cover every contingency, and they are therefore misleading, if any test shows an exception apparently comprehended. There is often the same difficulty in stating a matter comprehensively as courts find in trying to define, for example, a state's police power.

NOTES OF IMPORTANT DECISIONS:

HIGHWAYS—DOG CAUSING INJURY TO AUTOMOBILE.—The superior right of automobile or dog on street appears to have been involved in *Tasker v. Avey*, 96 Atl. 737, decided by Maine Supreme Court, and judgment against the owner of the dog for damage to the automobile seems to establish a principle in highway law.

The facts show that plaintiff was driving his automobile along the highway in the exercise of reasonable care, when defendant's dog, as plaintiff testifies, "jumped directly in front of my machine and so quick I didn't have time to apply the brakes before it struck him. The left-hand wheel struck him and jacked the machine around across the ditch, blown out of the solid ledge, and tipped it over."

The Maine statute provides that, "when a dog does damage to a person or one's property, his owner or keeper * * * forfeits to the person injured the amount of the damage done," provided it was not occasioned by the fault of the person injured. The court thought there was evidence to justify verdict in plaintiff's favor.

There is here an utter absence of discussion

as to the dog being or not out of bounds, or whether he was where he could have been seen before he "jumped," or whether he might have been expected to jump, or whether plaintiff should have slowed up if he saw him. Should the automobilist have taken into account animal propensities, or should the dog be regarded as having the intelligence of a human being so as to make his owner liable for his pranks or harmful indiscretions? Does the case mean that, so far as dogs are concerned, the "joyrider" must not be interfered with, whatever may be thought as to other animals or persons on the highway? If so, let his "joy be unconfined." Perhaps also a chicken may not "cross the road" in safety.

BANKS AND BANKING—GENERAL MANAGER OF CORPORATION ISSUING CHECKS TO FICTITIOUS PARTIES.—Upon the principle that a bank is not liable where it is misled by the negligence or other fault of the drawer in paying a check to one other than the payee, the Supreme Court of Tennessee holds, that where a corporation's general manager issues checks to payees and, vouching for their identity, collects the checks himself and appropriates their amounts the bank is not liable to the drawer. *Litchfield Shuttle Co. v. Cumberland Valley Nat. Bank*, 183 S. W. 1006.

The court admits the rule that a bank must judge for itself as to the identity of the payee of a check, but, under circumstances amounting to a direction by the drawer to pay to one as the named payee, it is excused. This exception appears quite evident, but does it cover the case of a corporate officer collecting such a check himself? It seems a well known principle that, if such an officer draws a check to his own order, one receiving it is bound to inquire whether it was lawfully issued or not. How is it different, if the officer draws the check in favor of another and then vouches for the latter's identity?

Or suppose he may do the latter, so far as a named payee collecting the check is concerned, can the officer vouch for that payee's identity so as to collect the check himself? Is not the bank put on inquiry just as much as were the check drawn by the officer to his own order?

The court concluding its opinion says: "Considering the character of complainant's business and the extent of Hooper's authority, the defendant bank may very well have concluded

that the checks here in controversy represented expenses of the mill paid in cash by Hooper and the checks were drawn and indorsed by him as vouchers." But, we think, that the very fact that the bank may have been obliged to argue to some such conclusion as above stated, shows that it ought to have made inquiry into the issuance of such checks.

DAMAGES—MENTAL SUFFERING, BUT WITHOUT OTHER INJURY.—The Federal Supreme Court holds that there was error in refusing a requested instruction as follows: "As the shipment which is alleged to have been delayed was a shipment in interstate commerce and as the damage claimed by the plaintiff is damage for mental suffering only on account of the delay of the delivery of such shipment, the court instructs the jury that under the evidence in this case, the plaintiff is not entitled to recover any damage." *Southern Expr. Co. v. Byers*, 36 Sup. Ct. 410.

Justice McReynolds said, *Southern Express Co. v. Byers*, 36 Sup. Ct. 410: "In such circumstances, the long settled common law rule permitted no recovery; the decisions to this effect rest upon the elementary principle that mere mental pain and anxiety are too vague for legal redress where no injury is done to person, property, health or reputation." The lower federal courts, almost without exception, have adhered to this doctrine and in so doing we think they were clearly right upon principle and also in accord with the great weight of authority. * * * In 1881, the Supreme Court of Texas held the addressee of a message might recover damages of a telegraph company because of mere mental suffering." *So Relle v. W. U. Tel. Co.*, 55 Tex. 308, 40 Am. Rep. 805.

It is then recited that Alabama, Iowa, Kentucky, Nevada, North Carolina and Tennessee approved this ruling, while the Dakotas, Florida, Georgia, Illinois, Indiana, Kansas, Minnesota, Mississippi, Missouri, New York, Ohio, Oklahoma, Virginia and West Virginia "definitely rejected the innovation." Justices McKenna and Holmes merely concur in the result. If this doctrine is as is stated, an "innovation" it ought to be rejected and perversity in an apparently hopeless view, should not cause a small minority of the courts to perpetuate a conflict of decision. The question, after all, is more abstract than real.

RELIGIOUS ASSOCIATION—DAMAGE TO THIRD PERSON IN ENFORCEMENT OF DISCIPLINE.—In *Kuryer Pub. Co. v. Messmer*, 156 N. W. 948, decided by Wisconsin Supreme Court, the facts show that defendants

as Roman Catholic Bishops of certain dioceses, caused to be read by the clergy of Polish Catholic churches, a pastoral letter enjoining the reading, keeping or subscribing for a newspaper published by plaintiff as being "greatly injurious to Catholic faith and discipline: the publication being alleged to be of an anti-Catholic spirit," "a matter to be decided by ourselves." Injunction was asked "commanding the defendant bishops to withdraw and rescind the pastoral letter." Conspiracy and malice were alleged.

A *per curiam* opinion was rendered, one judge dissenting, in which it was said that: "Notwithstanding much prolixity in the complaint, the real gravamen of the action is an attempt to hold the defendants liable for the the pastoral letter. This letter does not require the breach of any contract nor the withholding of any advertising patronage, but warns against the newspaper in question and forbids those who would continue good church members against reading it. This was within the scope of church discipline, and, if incidental pecuniary loss accrues to plaintiff, it is *damnum absque injuria*. By maintaining their church discipline and declaring the paper improper to be read by church members they have violated no legal right of the plaintiff. It might be otherwise if they attempted to forbid social or business intercourse with the plaintiff in respect to trade or commerce or something which ordinarily could not affect the faith of the members. Recommending to the members what they should read under pain of expulsion from the church communion is within the jurisdiction of every pastor and every prelate of every church which professes to leave such matters to the determination of its clergymen."

Whether or not the averment that "the defendants entered into a conspiracy for the purpose of injuring the plaintiff in its business as publisher of a newspaper and that said pastoral letter was maliciously published and circulated for such purpose," was sufficient to take the letter out of the category of privileged communications was a more serious question than the one suggested in the *per curiam* opinion. But that was merely cautionary and the court disposed of the averment referred to by saying wherein lay "the real gravamen of the action." At all events, neither a member nor an outsider, should be allowed, in pursuing his liberty in doing business, to shield such from interference by a church or other society in enforcing its own discipline and preserving the means of its continued existence. The intruder takes chances in his prior interference.

THE BULK SALES LAW OF THE STATE OF WASHINGTON.

In the Central Law Journal of April 7, 1916, appears an interesting contribution on "The Bulk Sales Law" of Kansas; which also refers generally to the laws of other states on the same subject. According to the article the Kansas law is rather unsatisfactory, for it is stated that "the creditor is left in precisely the same position as if there were no bulk sales law, except that he has received notice that a sale is about to take place." If there is no other advantage to be had under that law, it appears to be of little practical utility.

However, in this state, the law serves a very useful purpose and is of real benefit. The first act in Washington on this subject was passed in 1901, and thus antedates the laws of most states. This statute is in brief as follows:

First. Every person who shall purchase "any stock of goods, wares and merchandise in bulk, for cash or on credit" before paying for the same, either in money or by note or credit, shall demand a sworn statement from the vendor, setting forth the names of all his creditors, their addresses, and the amount owing to each of them. The vendor is required to make and deliver such a statement in accordance with a statutory form.

Second. It is required of the vendee to see that the purchase money is pro rated among the bona fide claims of the vendor's creditors as shown by the verified statement, or the sale "shall be fraudulent and void."

Third. If the vendor swears to a false statement, he is liable to a penalty for perjury fixed at \$1,000.00 fine or a felony sentence of one to five years imprisonment.

Fourth. Any sale other than in the ordinary course of business or trade; or when ever substantially the entire business or trade, or the vendor's interest therein, is

sold; or when all the fixtures and equipment of the business are sold—such sale "shall be deemed a sale or transfer in bulk." The creditors may in writing waive their rights under this statute.

Fifth. The act does not "apply to executors, administrators, receivers, or public officers acting under judicial process."

Of course, this act has often been for consideration before our Supreme Court. Its constitutionality was challenged at once upon these grounds:

(a) That it deprived a person of his property without due process of law, in that it abridged the right of contract and restricted the rights of certain individuals to dispose of their property.

(b) As class legislation.

(c) That it was in restraint of trade.

The act was upheld as a rightful exercise of the police power, for the protection of the public and the prevention of fraud among individuals; as it applied to all persons of the same class it was not deemed class legislation; and not in restraint of trade, for it only restricted the application of the proceeds when sales were in bulk.¹

The statute being valid, next came its proper application to business transactions. We will refer to the decisions and make such comment as seems to be applicable.

Fitzhenry v. Munter² holds that a merchant who sold out his store at auction to the extent of \$170.00, and the rest for the lump sum of \$307.00, should have complied with the statute because of the latter sale.

The decision subject to criticism is Plass v. Morgan,³ where it was held that the act applied to a sale of the "goods, wares and merchandise" in a "boarding house and restaurant;" while in Everett Co. v. Smith,⁴ the court held that the law did not apply to the sale of horses, carriages and property in a livery stable. In brief, that the statute

(1) *McDaniels v. Connelly*, 71 Pac. 37 (Wash.).

(2) 74 Pac. 1003 (Wash.).

(3) 78 Pac. 784 (Wash.).

(4) 82 Pac. 905 (Wash.).

should be limited to "goods kept for sale as merchandise." It is difficult to reconcile these two cases in holding that the law applies to one kind of business and not to the other, considering the limitation placed upon the statute itself by the last quoted case. We think, however, that *Plass v. Morgan* was incorrectly decided, if it included articles permanently kept in the business. The moment the Supreme Court construed the words "any stock of goods, wares and merchandise in bulk" to apply to the contents of a boarding house and restaurant and particularly to property therein not kept for sale, there was no reason why it should not also apply to any business generally, although it be a machine shop or a factory; for "goods, wares and merchandise" is broad enough to include personal property of every description, such as cattle.⁵

These words include promissory notes, as held in *N. E. S. Co. v. Commonwealth*.⁶ "Stock of merchandise" in a similar act was construed to refer "to articles which the seller keeps for sale in the usual course of business."⁷

In Illinois "stock of merchandise" in a statute was held to be synonymous with "stock in trade" as ordinarily understood by merchants.⁸

However, our Supreme Court has followed the idea (except *Plass v. Morgan*) that "stock in trade" means property that is kept for sale in the usual course of business, as in *Albrecht v. Cudihee*,⁹ where it was decided that the sale of a cash register used in a saloon was not subject to the bulk sales law where sold with the entire saloon. The Court there said: "The statute only applies to goods belonging to the mercantile stock or supplies which are kept for sale."

Considering the last quotation as the correct exposition of the law, *Plass v. Morgan*,¹⁰ is not an authority, but should be considered overruled. In fact the legislature after the last decision cited, amended the law in 1913,¹¹ to include "fixtures and equipment used in and about the business of the vendor," which would have been unnecessary if the extensive meaning were given to "stock of goods, wares and merchandise" as determined in the case of *Plass v. Morgan*.

The next point raised was, whether the act applied to creditors only who held claims for goods sold to the merchant, or to creditors generally at the time of sale. The Court held properly that it applied to all creditors.¹² The statute makes "the sale fraudulent and void;" but between the vendor and vendee the sale is valid; creditors only may avoid the sale.¹³

Under our Washington law a debtor may prefer any creditor, and for that purpose turn over his entire stock of goods to a creditor without complying with the bulk sales act.¹⁴ Of course, bankruptcy proceedings within four months would avoid such preference and transfer, if the transaction be not in good faith and not for a present fair consideration.¹⁵

If a creditor receives his pro rata of the selling price, he waives non-compliance with the statute. So held in *Continental Co. v. Swanson*.¹⁶

As the act refers to "purchases for cash or on credit" it follows that a transfer of a stock of goods by a debtor to one of his creditors where the debt exceeds the value of the property, does not constitute a sale within the bulk sales law; for that would constitute only a preference, and is per-

(5) See *Gromer v. McMillan*, 128 S. W. 285 (Mo.).

(6) 81 N. E. 286 (Mass.).

(7) *Gallus v. Elmer*, 78 N. E. 772 (Mass.).

(8) *Off & Co. v. Morehead*, 85 N. E. 264 (Ill.).

(9) 79 Pac. 628 (Wash.).

(10) 78 Pac. 784 (Wash.).

(11) Laws, page 604.

(12) *Eklund v. Hopkins*, 78 Pac. 787 (Wash.).

(13) *Kasper v. Spokane*, 151 Pac. 800 (Wash.).

(14) *McAvoy v. Jennings*, 87 Pac. 53 (Wash.).

(15) *Friend v. Rosenfeld*, 151 Pac. 776.

(16) 139 Pac. 865 (Wash.).

missible under state law.¹⁷ This doctrine appears to have been contrary to professional opinion, for it was brought again before our court in *Globe v. Montgomery*¹⁸ and *Daniels v. Pacific Brewing Co.*¹⁹ but affirmed in the two subsequent cases.

A bona fide purchaser obtains good title from a vendee as against the creditors of the former vendor, although such vendee purchased without complying with the statute. The remedy of the creditors is against the wrongdoers, the immediate parties to the first sale, as for a conversion.²⁰

Also, the purchaser of a stock of goods takes perfect title as against a creditor whose name is omitted from the sworn statement. The latter's remedy is to prosecute the vendor for perjury, and he may recover in a civil action against him.²¹

Where one has purchased a stock of goods without taking the verified statement, and fails to see that the purchase money is pro rated among the creditors, the purchaser is not liable in a direct proceeding; their only remedy is by attachment or garnishment to reach the property conveyed contrary to law.²²

The purchaser is liable to the creditors although not indebted to the vendor, even if he had disposed of the goods before attachment or garnishment.²³

Whether the purchaser would be limited as a garnishee to the actual value of the stock, or to the full amount of all the creditors' claims, has not been directly adjudicated in this state; but on principle it would seem his liability would be for conversion to the full value of the goods unlawfully acquired, and no greater; and if the debts exceeded the value of the stock

purchased, then to each creditor to the extent of his pro rata share.²⁴

Friedman v. Branner,²⁵ carries out this doctrine: that a vendee as garnishee is limited in liability to the amount or value of the property purchased unlawfully. The vendee is regarded as a "trustee for the benefit of the creditors of the vendor."

When a partnership disposes of its stock of merchandise in bulk, the statutory affidavit need only contain the names of the firm creditors.²⁶

We have thus presented the statute and decisions in Washington, to date. There is no doubt that this law has served a wholesome and beneficial purpose. No prudent person will purchase a stock of goods unless he obtains a verified list of creditors and claims, and sees to it that the purchase money is then pro rated amongst them as per list. This act has not interfered with honest business transactions, but, on the contrary, has prevented fraud. If a merchant sells a stock of goods out of the ordinary course of business there is no reason why he should not pay his creditors to the full extent of the purchase money received. Common honesty requires this; creditors feel safer, and in the long run it is for the best interests of the community that creditors have reasonable protection. However, the act is limited to sales "for cash or on credit;" therefore an exchange or trade for a stock of merchandise would not be subject to the act. A chattel mortgage upon a stock of goods is likewise not within the statute.²⁷

This simply demonstrates that it is difficult to cover every conceivable scheme to defraud. It is sufficient, however, to say that the law has proven quite satisfactory.

FRED H. PETERSON.

Seattle, Wash.

(17) *Peterson v. Doak*, 86 Pac. 663.

(18) 148 Pac. 496 (Wash.).

(19) 150 Pac. 609 (Wash.).

(20) *Kasper v. Spokane*, 151 Pac. 800 (Wash.).

(21) *Friend v. Rosenfeld*, 151 Pac. 776 (Wash.).

(22) *Rothschild v. Trewalla*, 79 Pac. 480 (Wash.).

(23) *Kohn v. Fishback*, 78 Pac. 199 (Wash.).

(24) "Foundations of Legal Liability," by Street, Vol. 1, page 255.

(25) 130 Pac. 360 (Wash.).

(26) *Whitehouse v. Nelson*, 86 Pac. 174 (Wash.).

(27) *Daniels v. Pacific Brewing Co.*, 150 Pac. 609 (Wash.).

DEFRAYING EXPENSES OF PARTY PRIMARY OUT OF PUBLIC FUNDS.

The decision of the "Supreme Court of Texas in the case of *Waples v. Marrast*,¹ just handed down virtually knocks out the whole primary election law. In this decision the court say the money of the public treasury cannot be used by a political party to hold primary elections to select their candidates for office.

The suit was brought to test the constitutionality of the presidential primary election law passed by the Thirty-third Legislature. This law provided that the expense of such primary election of a party whose candidate for governor at the last preceding general election received as many as 50,000 votes should be paid out of the county treasury of each county, no provision being made for the expense of the primary election of other parties, if held under the act.

Under the agreed facts of the case submitted, the operation of the act was, to require only the Democratic party to hold the primary election, since it is the only party in the state whose candidate for governor at the last general election received as many as 50,000 votes. The cost of such primary would be not less than \$300,000 and would probably exceed that amount.

The Court say: "The great powers of the state—and the taxing power is the one to be always the most carefully guarded, can not be used, in our opinion, in aid of any political party or to promote the purposes of all political parties. They are no more to be made the objects of governmental bounty or favor than any other class of public organizations into which groups of citizens may form themselves. Expenses incurred in the furtherance of their objects can no more be defrayed out of the public treasury than the expenses of other associations of individuals. If it is constitutional to use the public revenues

to pay the cost of their primary elections, it would likewise be constitutional to pay the cost of their candidates' campaigns. If the constitutional barrier is removed in the one case, it can not be restored in the other.

"To provide nominees of political parties for the people to vote upon in the general elections is not the business of the state. It is not the business of the state because, in the conduct of the government, the state knows no parties and can know none. If it is not the business of the state to see that such nominations are made, as it clearly is not, the public revenues can not be used in that connection. To furnish their nominees as claimants for the popular favor in the general elections is a matter which concerns alone those parties that desire to make such nominations. It is alone their concern because they alone are interested in the success of their nominees. The state, as a government, can not afford to concern itself in the success of the nominees of any political party, or in the elective offices of the people being filled only by those who are the nominees of some political party. Political parties are political instrumentalities. They are in no sense governmental instrumentalities. The responsible duties of the state to all the people are to be performed, and its high objects effected without reference to parties, and they have no part or place in the exercise by the state of its great province in governing the people."

Under this sweeping decision of the Supreme Court it is thought doubtful if the Democratic party can pay for any of its primaries out of the public treasury. As these primaries cost hundreds of thousands of dollars every two years there is no other agency save the state that would be able to meet this charge.

The worst feature of the situation has to do with the senatorial primary. The primary law provides that a senatorial candidate must have received a majority of all the votes cast. There are now seven candi-

(1) 184 S. W. 180.

dates for the Senate and nobody expects any one candidate to receive a majority in the regular primary in July. The Democratic State Executive Committee is utter-ly at sea.

J. P. CRANKE.

Jacksonville, Texas.

CHattel Mortgage—Priority.

GARDNER v. FIRST NAT. BANK OF DE QUEEN.

Supreme Court of Arkansas. March 6, 1916.

184. S. W. 51.

The artisan's lien created by Acts 1911, p. 298, § 1, though it attaches subsequent to the recordation of a chattel mortgage on personal property used in the operation of a mill, is prior to such mortgage when the work for which the lien is claimed was necessary to permit the conduct of the business, so that the mortgagee must have contemplated its being done as necessary to the securing of his mortgage lien.

T. J. Harvill, the owner of a sawmill, was indebted to A. B. Gardner, a blacksmith and wheelwright and horseshoer, in the sum of \$50.85 for repair work on a wagon and shoeing horses. He filed an itemized account of his work done with the circuit clerk within the time required by the statute. Then he instituted this action before a justice of the peace to enforce his lien against the property. The First National Bank of De Queen filed an intervention, claiming the ownership of the property by virtue of a mortgage executed to it by T. J. Harvill before the work was done by the plaintiff. The plaintiff recovered judgment before the justice of the peace, and the case was appealed to the circuit court. The facts briefly stated, are as follows: T. J. Harvill owned and operated a sawmill. In connection with it, he used some log wagons and some horses and mules. The First National Bank of De Queen had a mortgage on the wagons and horses and mules, but allowed Harvill to use them in the operation of his sawmill. The mortgage was duly recorded. After this, the plaintiff, Gardner, who was a blacksmith and wheelwright, made certain repairs on the wagons and shod some of the horses and mules which were engaged in pulling the wagons. The mortgagee did not know that the mortgagor had had the repair work done and did

not give its specific consent to its being done. The circuit court held that the bank had a lien prior in point of time to that of Gardner and that its lien was superior to Gardner's lien. Judgment was thereon rendered in favor of the bank, and the plaintiff, Gardner, has appealed.

HART, J. (after stating the facts as above). [1, 2] Section 1 of Act 324 of the General Acts of 1911 provides that:

"Blacksmiths, wheelwrights and horseshoers, who perform work or labor for any person, if unpaid for same, shall have an absolute lien on the product of their labor, and upon all wagons, carriages, implements and other articles repaired or horses or other animals shod by them, for all sums of money due for such work or labor and for any materials furnished by them and used in such product, repairs or shoeing."

See General Acts of 1911, p. 298.

Artisans' liens are a creation of the common law and are not dependent upon statute for their existence. In the case before us, the mortgagor operated a sawmill, and the personal property in the controversy in this suit which was embraced in the mortgage to the bank was used by him in the operation of the mill. He used them as a means of earning the money to pay off the mortgage debt. The mortgagee allowed the mortgagor to keep and use the property for that purpose. It was necessary that the wagons be repaired and that the horses be shod in order to be used by the mortgagor for the purpose for which they were allowed to remain in his possession. In short, the record discloses that the mortgagee allowed the mortgagor to keep the property to use in running his sawmill, and it may be fairly implied that such use of the property was contemplated when the mortgage was executed. Under such circumstances, necessary repairs are superior to the lien of the mortgage as the mortgagee had impliedly authorized them.

The rule is well stated in *Hammond v. Danielson*, 126 Mass. 294, which was a case of a lien for repairs on a hack left in the possession of the mortgagor to be used in his business. In that case, Gray, C. J., said:

"A lien on personal property cannot indeed be created without authority of the owner. *Hollingsworth v. Dow*, 19 Pick. (Mass.) 228; *Globe Works v. Wright*, 106 Mass. 207. But in the present case such an authority must be implied from the facts agreed. The subject of the mortgage is a hack, that is to say, a carriage let for hire, described in the mortgage as 'now in use' at certain stables, and which, as the parties have agreed in the case stated, the mortgagor retained possession of and used

agreeably to the terms of the mortgage. It was the manifest intention of the parties that the hack should continue to be driven for hire, and should be kept in a proper state of repair for that purpose, not merely for the benefit of the mortgagee, but for that of the mortgagor also, by preserving the value of the security and affording a means of earning wherewithal to pay off the mortgage debt. The case is analogous to those in which courts of common law, as well as of admiralty, have held, upon general principles, independently of any provisions of statute, that liens for repairs made by mechanics upon vessels in their possession take precedence of prior mortgages."

To the same effect see *Smith v. Stevens*, 36 Minn. 303, 31 N. W. 55; *Meyer v. Berlandi*, 39 Minn. 438, 40 N. W. 513, 1 L. R. A. 777, 12 Am. St. Rep. 663; *Tucker v. Werner*, 2 Misc. Rep. 193, 21 N. Y. Supp. 264; *Ruppert v. Zang*, 73 N. J. Law, 216, 62 Atl. 998; *Garr v. Clements*, 4 N. D. 559, 62 N. W. 640; *Watts v. Sweeney*, 127 Ind. 116, 26 N. E. 680, 22 Am. St. Rep. 615. There is nothing in our decisions in regard to the priority of mortgages over mechanics' liens which conflict with the rule we have here announced.

[3] In the case of the mortgage of realty there can be no implied authority from a mortgagee that the mortgagor go on and create a lien for erecting new buildings or improving existing ones that shall take precedence of the mortgage. The buildings are attached to the soil, and as soon as erected become a part of the realty. Buildings which are repaired are a part of the realty before the repairs are made. No facts exist in the nature of the transaction from which authority on the part of the mortgagor to build or to repair houses can be implied.

The doctrine of agency implied from circumstances upon which the decision is based was recognized by this court in *Sheeks-Stephens Store v. Richardson*, 76 Ark. 282, 88 S. W. 983. There the court held that the lien of the laborer who produced the crop is superior to that of the mortgagee who furnished supplies necessary to raise the crop. As part of the reason for holding as it did, the court said that one who takes a mortgage on a crop to be thereafter produced must know that it requires labor to produce it, and, under the statute, laborers have liens for their work. So, under the circumstances of this case, it was contemplated between the parties that the mortgagor should use the property in his business, and this raised by implication the right of the mortgagor to repair the property and thus render it fit for the intended use, as such action on

his part was for the benefit of all concerned.

From the views we have expressed, it follows that the judgment must be reversed, and the cause remanded for a new trial.

NOTE.—Implied Consent of Mortgagee in Creation of Lien on Personal Property.—The instant case refers to an artisan's lien, and priority over chattel mortgage arising by implication of law, but it would seem that any such lien as being superior to the chattel mortgage might arise in favor of an agister or a livery stable keeper as well. Thus while the weight of authority is that a lien for feeding and caring for domestic animals is inferior to that of a prior valid chattel mortgage, yet hold that there may be implied consent by the mortgagee which will postpone his lien to an agister or livery stable keeper.

Thus in *Colquitt v. Kirkman*, 47 Ga. 555, there is referred to a statute giving to a livery stable keeper a lien against the true owner, and the court says: "We are at a loss to understand how it should occur to anyone that the lien of the livery-man for his general account could be good upon an article not in the power of the bailor to charge," but "it is clear that the livery-man has a lien upon the bailor's property for his general account, but as the mule was under mortgage, duly recorded, the bailor could in no way put a lien on that except so far as to preserve it. That is the basis of this exception to the general rule. A horse must be fed, a wagon or buggy taken care of, even if it be in the hands of a thief. * * * The mortgage is paramount except for the charges on each piece of property and each piece must bear its own burden."

In *Smith v. Stevens*, 36 Minn. 303, 31 N. W. 55, it appears that statute gives a lien to any person keeping horses at the request of the lawful owner or possessor. It was said this "expressly provides that keeping at the request of the legal possessor shall be sufficient. * * * A mortgage made, as was that in the case at bar, while this statute was in force, is made subject to it, as to other applicable general rules of law. A mortgagee, when he takes a mortgage, takes it, in legal contemplation, with full knowledge of and subject to the right of a person keeping the property at the request of the mortgagor or other lawful possessor to the statutory lien, as he would do to a common law lien."

In *Corning v. Ashley*, 51 Hun. 483, 4 N. Y. Supp. 255, there was similar reasoning to that in *Smith v. Stevens*, supra. This case was affirmed without opinion, in 121 N. Y. 700, 24 N. E. 1100. See also *Aylmore v. Kahn*, 11 Ohio C. C. 392; *Blain v. Manning*, 36 Ill. App. 214.

In *Case v. Allen*, 21 Kan. 217, 30 Am. Rep. 425, there was an agister's lien created by statute. The court reasoned as follows: "The lien of the mortgage was prior in time, was created by contract, while that of the agister, later in time, arises out of the statute. Though the amount in controversy is small, yet the question is of some importance. It affects a great many of the smaller transactions of business. A buggy is taken to a shop for repairs; a horse is driven to a livery stable and left over night; a traveler brings his trunk and stops at a hotel. In all these cases a lien is given by statute. Suppose a prior chattel mortgage exists, must the statutory lien give way to the prior contract lien? The lien of the

agister is not the mere creature of contract. * * * The possession of the agister was rightful, and the possession being rightful, the keeping gave rise to the lien; and such keeping was as much for the interest of the mortgagee as the mortgagor. The cattle were kept alive thereby and the principle seems to be that where the mortgagee does not take possession but leaves it with the mortgagor, he thereby assents to the creation of a statutory lien for any expenditure reasonably necessary for the preservation or ordinary repair of the thing mortgaged."

Williams v. Allsup, 10 C. B. (N. S.) 417, held the lien to a shipwright for repairs on a vessel superior to that of a prior mortgage. See also *Johnson v. Hill*, 3 Starkie 172, where one, wrongfully in possession of a horse, left it with a livery stable keeper. His lien was held superior to that of a prior mortgage.

Central Nat. Bank v. Brecheisen, 65 Kan. 807, 70 Pac. 895, was distinguished from *Case v. Allen*, *supra*, because the lien was claimed on a contract to furnish food and care to animals. It was said as to *Case v. Allen*, that: "The court was careful, however, to confine this superior right of the agister to a lien derived from a compliance with the terms of the statute and not to one dependent on a contract between the mortgagor and the person caring for and feeding the stock."

In *Hammond v. Danielson*, 126 Mass. 294, there was a hack in use at a stable in possession of mortgagor who had it repaired. The court said: "Authority must be implied from the facts agreed. * * * It was the manifest intention of the parties that the hack should continue to be driven for hire and should be kept in a proper state of repair for that purpose, not merely for the benefit of the mortgagee, but that of the mortgagor also, by preserving the value of the security and affording a means of earning wherewithal to pay off the mortgage debt. The case is analogous to those in which courts of common law, as well as of admiralty have held, upon general principle, independently of any provision of statute, that liens for repairs made by mechanics upon vessels in their possession take precedence of prior mortgages."

Nat. Bank of Commerce v. Jones, 18 Okla. 555, 91 Pac. 191, 7 L. R. A. (N. S.) 310, is a fairly representative case of the view, that the only way the prior lien of the mortgage can be displaced is by the mortgagee directly participating in some way in the possession coming to the artisan, agister, livery stable keeper or other persons doing acts in preservation of the mortgaged property.

In *Rohan v. Ross*, 53 Colo. 328, 125 Pac. 489, in speaking of an agister's lien claimed to be superior to a chattel mortgage it was said: "Upon this subject with respect to the lien of the agister, the authorities are in conflict. The weight, however, appears to be that as the lien for agistment is purely statutory, no lien existing at common law, it is limited to the right of the owner in the property delivered for feeding, herding, pasturing or keeping, at the time of such delivery." Therefore it was held that the chattel mortgagee could take possession free of the lien claimed.

In *Monthly Installment Loan Co. v. Skellet Co.*, 124 Minn. 144, 144 N. W. 750, the ruling in *Smith v. Stevens*, *supra*, is approved because of

the form of the statute, but it is stated that: "This is not the rule under the various common law liens; nor is it the prevailing rule under statutes giving liens for the care or keeping or preservation or improvement of personal property." C.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM OF ANNUAL MEETING OF WISCONSIN STATE BAR ASSOCIATION.

The next annual meeting of the Wisconsin State Bar Association will be held June 28-30, 1916, at the city of Oshkosh. The following is the program:

Wednesday, June 28.

2:00 p. m.—President's Annual Address, George H. Hudnall. Report of Committees. General Business.

4:00 p. m.—Address, Burton Hanson, subject, "Benjamin Franklin."

8:00 p. m.—Address, Hon. M. B. Rosenberry, subject, "Will the Bar Furnish Our Leaders in the Approaching World Crisis?"

Thursday, June 29.

10:00 a. m.—Discussion, "Should the various municipal courts of Wisconsin outside of the county of Milwaukee be standardized?"

11:00 a. m.—Discussion, "To what extent should the Supreme Court interfere with cutting down damages in cases where the verdict of the jury has met the approval of the Circuit Court?"

2:00 p. m.—Address, Hon. Simeon E. Baldwin, New Haven, Conn., subject, "Keeping Our Treaty Obligations." Transaction of Unfinished Business. Report on Election of Officers. Selection of Place for Next Annual Meeting.

Remainder of program in the hands of local committee of Winnebago County Bar Association.

PROGRAM OF THE AMERICAN BAR ASSOCIATION MEETING.

The annual meeting of the American Bar Association will be held at Chicago, Ill., on Wednesday, Thursday and Friday, August 30, 31 and September 1, 1916.

Headquarters will be at the Congress Hotel, 504 S. Michigan boulevard.

The offices of the Secretary and Treasurer will be located in the Elizabethan Room (ground floor), Congress Hotel. The offices will open for registration of members and delegates,

and for sale of dinner tickets on Tuesday morning, August 29, at 10 o'clock.

The business sessions of the Association will be held and the formal addresses before it will be delivered in the Gold Room, Congress Hotel, Wednesday, August 30, 1916.

First Session, 10 a. m.: Addresses of welcome. Elihu Root, of New York, President of the Association, will deliver the President's address.

Second Session, 8 p. m.: Lindley M. Garrison, of New Jersey, former Secretary of War, will deliver an address.

Reception, 9:30 p. m.: A reception will be given by the Illinois State Bar Association and the Chicago Bar Association to the President and members and guests of the American Bar Association and ladies accompanying them, on Wednesday, August 30, at 9:30 p. m., in the Art Institute, Michigan boulevard and Adams street.

THURSDAY, AUGUST 31, 1916.

Third Session, 10 a. m.: The reports of standing and special committees will be presented and discussed.

Outing, 2 p. m.: On Thursday, August 31, 2 p. m., the members and guests and ladies accompanying them will be taken by automobile through the Chicago Park System to the South Shore Country Club, where afternoon tea will be served. They will leave Congress Hotel at 2 p. m., and return about 6:30 p. m.

Fourth Session, 8 p. m.: William E. Borah, of Idaho, United States Senator, will deliver an address, "Lawyers and the Public."

FRIDAY, SEPTEMBER 1, 1916.

Fifth Session, 10 a. m.: Frank J. Goodnow, of Maryland, President of Johns Hopkins University, will deliver an address, "Administrative Discretion and Private Rights."

Reports of committees not previously disposed of will be presented and discussed.

Sixth Session, 2 p. m.: Unfinished business.

Annual Dinner, 7 p. m.: The annual dinner of the Association will be given in the Gold Room of the Congress Hotel, on Friday, September 1, 7 p. m. Elihu Root, of New York, will preside. The Illinois and Chicago Bar Associations invite the ladies who accompany members of the Association to dine at the same time in the Florentine Room of the Congress Hotel.

COMMITTEES, AFFILIATED BODIES, ETC.

Special Conference.—It is proposed to hold a special conference of representatives of the American Bar Association and delegates from the various State and Local Bar Associations in the United States, to consider what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between

the American Bar Association and such other associations. The conference will convene in the Green Room (mezzanine floor), Congress Hotel, on Monday, August 28, at 10 o'clock a. m.

The Executive Committee of the Association will meet on Tuesday, August 29, 9 p. m., in the English Room (mezzanine floor, Lake front), Congress Hotel.

The General Council of the Association will meet in the Green Room (mezzanine floor), Congress Hotel.

The first meeting of the Council will be held on Wednesday, August 30, 9 a. m.

The National Conference of Commissioners on Uniform State Laws will convene on Wednesday, August 23, 2 p. m., in the Florentine Room (first floor), Congress Hotel.

The sessions of the Conference will continue on Thursday, Friday, Saturday, Monday and Tuesday, August 24, 25, 26, 28 and 29.

The Executive Committee of the Conference will meet on Wednesday, August 23, 10 a. m., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Judicial Section will hold its session on Wednesday, August 30, 2 p. m., in the Florentine Room (first floor), Congress Hotel.

There will be an informal dinner for all members of the Section, the officers, members of the Executive Committee, and former presidents of the American Bar Association, on Tuesday evening, August 29, 1916, at 7 o'clock, in the Florentine Room, Congress Hotel.

The Comparative Law Bureau will hold its session on Wednesday, August 30, 2 p. m., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Section of Patent, Trade-Mark and Copyright Law will meet on Tuesday, August 29, 3:30 p. m., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Section of Legal Education will hold its sessions in the Green Room (mezzanine floor), Congress Hotel. There will be two sessions of the Section on Tuesday, August 29, 3 p. m., and 8 p. m. A third session will be held on Wednesday, August 30, 3:30 p. m.

The American Institute of Criminal Law and Criminology will convene on Tuesday, August 29, 10 a. m., in the English Room, Congress Hotel.

There will be three sessions of the Institute on Tuesday, 10 a. m., 2 p. m., and 8 p. m.

The Section of American Society of Military Law will meet Wednesday, August 30, 2:30 p. m.

Note—The Association of American Law Schools, whose regular annual meeting will occur in Chicago in December, 1916, will co-

operate with the Section of Legal Education of the American Bar Association in its sessions on August 29 and 30.

CHRONOLOGICAL RESUME.

AUGUST-SEPTEMBER, 1916.

Wednesday, 23rd:

10:00 a. m.—Executive Committee of the National Conference of Commissioners on Uniform State Laws.

Wednesday, 23rd, to Tuesday, 29th, Both Inclusive.—National Conference of Commissioners on Uniform State Laws.

Monday, 28th:

10:00 a. m.—Special conference of representatives of American Bar Association and delegates from State and Local Bar Associations.

Tuesday, 29th:

10:00 a. m.—American Institute of Criminal Law and Criminology.

2:00 p. m.—American Institute of Criminal Law and Criminology.

3:00 p. m.—Section of Legal Education. (Session of State Bar Examiners and Law School Teachers.)

3:30 p. m.—Section of Patent, Trade-mark and Copyright Law.

7:00 p. m.—Informal Dinner, Judicial Section, Congress Hotel.

8:00 p. m.—American Institute of Criminal Law and Criminology.

8:00 p. m.—Section of Legal Education.

9:00 p. m.—Executive Committee of the Association.

Wednesday, 30th:

9:00 a. m.—General Council of the Association.

10:00 a. m.—First Session American Bar Association. Addresses of welcome. President's address, Elihu Root.

2:00 p. m.—Judicial Section.

2:00 p. m.—Comparative Law Bureau.

2:30 p. m.—American Institute of Criminal Law and Criminology (Section of American Society of Military Law).

3:30 p. m.—Section of Legal Education.

8:00 p. m.—Second Session American Bar Association. Address, Lindley M. Garrison.

9:30 p. m.—Reception to members and guests by the Illinois State Bar and Chicago Bar Associations.

Thursday, 31st:

10:00 a. m.—Third Session American Bar Association. Presentation of reports of committees.

2:00 p. m.—Visit to the South Shore Country Club.

8:00 p. m.—Fourth Session American Bar Association. Address, William E. Borah.

Friday, September 1st:

10:00 a. m.—Fifth Session American Bar Association. Address, Frank J. Goodnow. Unfinished business.

2:30 p. m.—Sixth Session American Bar Association. Unfinished business.

7:00 p. m.—Annual dinner American Bar Association.

Frederick A. Brown, 1518 Otis Building, Chicago, Ill., has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Brown, please state preference of hotels, time of arrival, period for which rooms are desired, whether with or without bath, and how many persons will occupy each room.

The following rooms at the Congress Hotel are available for purposes of committee meetings and will be assigned on application of chairmen to the Secretary, viz.: A18, 20, 22, 24, 26, 28, A6, A8, and Elizabethan Balcony (all on mezzanine floor).

GEORGE WHITELOCK,
Secretary.

1416 Munsey Bldg., Baltimore, Md.

CORRESPONDENCE.

MEETING OF THE ARKANSAS BAR ASSOCIATION.

Editor of Central Law Journal:

The annual meeting of the Bar Association of Arkansas will be held this year in Little Rock, on May 30-31.

Hon. Robert L. Williams, ex-Chief Justice of the Supreme Court, and now Governor, of the state of Oklahoma, will be the guest of the Association, and will deliver the annual address. Only a portion of the program has been definitely arranged. President Oglesby will address the Association, Chief Justice McCulloch, Chancellor Humphreys, of Fayetteville, and Assistant United States Attorney H. M. Rector, of Little Rock, will read papers.

It has been several years since the Association has met in Little Rock. The membership is larger than it ever has been. A special membership committee, composed of Judge Carmichael, Chancellor Martineau and Ashley Cockrill is making an effort to increase the membership; and thus extend the influence of the Association. No court that we have been able to hear from will be in session on our days. President R. J. Lea of the State Judges'

Association has called a special meeting of that body at Little Rock on the same days. All these things, together with letters we are receiving daily from the members generally, indicate clearly that this will be the greatest meeting we have ever held.

The usual banquet will be given, to which the ladies are cordially invited. Other social entertainments will be provided, and, incidentally, the Atlanta baseball team will be here.

ROSCOE R. LYNN, Secretary.

Little Rock, Ark.

BOOKS RECEIVED.

Essentials of Veterinary Law. By Henry Bixby Hemenway, A.M., M.D. Fellow, American Academy of Medicine; Fellow, American Medical Association; Member, American Public Health Association; Member, American Association of Railway Surgeons; Member, American Statistical Association, etc. Author, Principles of Public Health Administration. Price, \$3.00. Chicago. T. H. Flood & Co. 1916. Review will follow.

Corpus Juris. Being a Complete and Systematic Statement of the Whole Body of the Law, as Embodied in and Developed by all Reported Decisions. Edited by William Mack, LL.D., Editor-in-Chief of the Cyclopaedia of Law and Procedure; and William Benjamin Hale, LL.B., Contributing Editor of the American and English Cyclopaedia of Law and the Encyclopaedia of Pleading and Practice. Vol. VI. New York. The American Law Book Co. 1916. Review will follow.

Abraham Lincoln, the Lawyer-Statesman. By John T. Richards, former President of the Chicago Bar Association. Boston and New York. Houghton Mifflin Company. 1916. Price, \$2.50 net. Review will follow.

The Law and the Practice of Municipal Home Rule. By Howard Lee McBain, Associate Professor of Municipal Science and Administration in Columbia University. New York. University Press. 1916. Price, \$5.00 net. Review will follow.

American Annotated Cases. Containing the Cases of General Value and Authority Subsequent to Those Contained in American Decisions, American Reports and the American State Reports. Thoroughly Annotated. Vol. 1916A. Bancroft-Whitney Company, San Francisco. Review will follow.

HUMOR OF THE LAW.

Lazy lawyers make our laws,
Mules and niggers raises cotton,
The cotton sells for ready cash,
Our laws are bad, yea rotten.

For every tear the lawyer spills,
He charges four or five \$ bills.
The farmer raises grain in stacks,
Then gives it up to pay the tax.
—John Hall in Salem (Ark.) Sun.

ETYMOLOGY.

Since from his Majesty, the Law,
We lawful get and legal,
Why can't we extricate from jaw
The jawful and the jegal?

A Missouri judge, traveling on circuit, once had before him in a small country town a case in which a tavern keeper was held for the payment on a land transaction of a large amount of money which he had not agreed definitely to pay. The court declared that, although his agreement was not on record, it was involved by construction, or implied, in his participation in a business proceeding connected with it.

After the judgment had been rendered the court adjourned for dinner, and the judge found that the only eating-house in the place was the inn kept by the defendant in the case he had just decided. He also found that the defendant personally superintended the preparation of the meals, and that the food was charged for on the European plan.

The judge called for two boiled eggs, which, with the other food he ordered, were brought to him done to a turn. He ate them, and at the end of the meal the bill was presented to him. He was astonished to read on it the following items:

Two boiled eggs.....15 cents
Two chickens at 75 cents each.....\$1.50

Calling the proprietor he asked: "How's this? I've had no chickens; why do you charge me for them?"

"Those are constructive chickens, your Honor," answered the innkeeper.

"What?"

"Why, they are implied in the eggs, you know," the man persisted.

His Honor began to understand, and said no more.—New York Times.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

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1. **Abatement and Revival**—Equity.—Plaintiff cannot, having instituted an action at law to obtain relief, maintain a suit in equity to obtain the same relief, but must, though the matter be one particularly of equitable cognizance, dismiss his action at law, if he proceeds in equity.—*Spear v. Coggan*, Mass., 111 N. E. 793.

2. **Adverse Possession**—Defined.—As applied to an adverse holding of another's realty, the words "open and notorious possession" mean that the disseisor's claim of ownership must be evidenced by acts and conduct sufficient to put one of ordinary prudence on notice that the land is held by claimant as his own.—*Buttz v. James*, N. D., 156 N. W. 547.

3. **Assault and Battery**—Automobile.—In a prosecution for assault and battery by striking another with an automobile, the fact that the car was exceeding the speed limit prescribed by the Motor Vehicle Act is not controlling as to defendant's guilt, but only a circumstance to be considered in deciding whether or not he was running his car at a rate of speed under existing conditions was obviously dangerous to persons using the highway.—*State v. Schutte*, N. J., 96 Atl. 659.

4. **Association**—Injunction.—The name of an order calling itself the "Ancient Egyptian Arabic Order, etc.," held a colorable misleading imitation of the name of a previously existing order calling itself the "Ancient Arabic Order, etc.," such as authorized the granting of a temporary injunction.—*Falsan v. Adair*, Ga., 87 S. E. 1080.

5. **Bail**—Presumption of Guilt.—The English rule that an indictment for a capital offense raises a presumption of guilt sufficient to warrant denial of bail has no application, since the evidence produced before the grand jury is now available; the indictment no longer being the best evidence as to probable guilt.—*Ford v. Duley*, Iowa, 156 N. W. 513.

6. **Bankruptcy**—Contract.—Though corporate treasurer has no right to coerce payment of increased salary and issuance of stock, held that contract was in force until rescinded, and creditors' objection to treasurer's claim in bankruptcy was not a rescission.—*In re Knox Automobile Co.*, U. S. D. C., 229 Fed. 241.

7. **Discharge**—Under Bankr. Act 1898, § 17, as amended by Act Cong. Feb. 5, 1903, § 5, a discharge in bankruptcy releases all provable debts except, among others, liabilities for obtaining property by false pretenses, for willful injuries to personal property, or for fraud, etc., while acting as officer or in fiduciary capacity.—*Glasco v. Cooper*, Ga. App., 87 S. E. 1095.

8. **Equity**—A court of bankruptcy as a court of equity has power to appoint a special master to take evidence, and these special masters may be standing masters in chancery, or appointed pro hac vice in particular cases.—*United States v. Coyle*, U. S. D. C., 229 Fed. 256.

9. **Involuntary Proceedings**—In involuntary proceedings, receivers should never be appointed without full compliance with all requirements of the Bankruptcy Act, including a showing that it is absolutely necessary for the preservation of the estate.—*Badders Clothing Co. v. Burnham-Munder-Root Dry Goods Co.*, U. S. C. C. A., 228 Fed. 470.

10. **Taxation**—Under Bankr. Act, § 64a, court held authorized to decide amount of legality of tax presented as preferred claim, and not limited to such questions as the bankrupt might have raised against the tax.—*In re E. C. Fisher Corp.*, U. S. D. C., 229 Fed. 316.

11. **Trust-Fund Doctrine**—Under trust-fund doctrine, stockholders selling stock to corporation and taking bond and mortgage held not entitled, as against trustee in bankruptcy, to insurance money on mortgaged property.—*Tepel v. Coleman*, U. S. D. C., 229 Fed. 300.

12. **Beneficial Associations**—Exhausting Remedy.—Where members of a benevolent association have agreed as part of their scheme of organization to submit their domestic grievances in the first instance to internal tribunals, they cannot against the protest of the association maintain a civil action based on such grievances.—*Wilber v. Lincoln Aerie*, No. 147, Fraternal Order of Eagles, Neb., 156 N. W. 658.

13. **Bills and Notes**—Corporate Officer.—The indorser of a note executed by the president of a corporation and purporting to be secured by a lien on corporate land, and pledged to secure a debt partly owed by him, was charged with no-

tice that the president was not authorized to give liens, and it was not an innocent purchaser.—*El Fresnal Irrigated Land Co. v. Bank of Washington, Tex. Civ. App., 182 S. W. 701.*

14. **Boundaries**—Monuments.—Though the grantor had driven iron pipes into the ground to mark a survey, and lines run to such pipes would include the number of acres granted to plaintiff, held that, where the conveyance called for a stream as a boundary, such stream was a natural monument, which would govern under L. O. L. § 878, regardless of the grantor's intent to convey only to the pipes.—*Hennigan v. Mathews, Ore., 155 Pac. 169.*

15. **Brokers**—Contract.—A contract which makes one the agent of the owner of land for the sale thereof is simply a listing contract, revocable at any time by the owner.—*Fields & Combs v. Vizard Inv. Co., Ky., 182 S. W. 934.*

16.—Contract.—A contract between plaintiffs and defendant, calling for the production by defendant of a customer who would sell to plaintiff's principal 50 tons of carboric crystals, was a brokerage contract.—*Spilo v. Baumann-McWhirter Chemical Co., N. Y. Sup. Ct., 157 N. Y. Sup. 521.*

17.—Contract.—A real estate broker is not entitled to compensation for his efforts to sell a farm, or even for the accomplishment of a sale, unless there is a written contract complying with the statute of frauds in the absence of which he is a mere volunteer not entitled to compensation.—*Lueddemann v. Rudolph, Ore., 155 Pac. 172.*

18.—Partial Performance.—Where there was no partial performance by the real estate agents of an agency contract which was without consideration, the owner could revoke the agency at any time before consummation of sale.—*Friedman v. Ware & Harper, Ga. App., 87 S. E. 1099.*

19.—Procuring Cause of Sale.—Where a catalogue prepared by a real estate broker illustrating property placed in his hands for sale happened into the hands of a subsequent purchaser to whom the broker made a fruitless effort to show the property, held that the broker was not the proximate or procuring cause of sale.—*Way v. Turner, Md., 96 Atl. 676.*

20. **Burglary**—Principal.—One who stood out in front of a saloon, keeping watch, while others broke and entered it, was guilty of burglary as a principal.—*McPherson v. State, Tex. Cr. App., 182 S. W. 1114.*

21. **Carriers of Goods**—Cattle.—Proof that out of a shipment of cattle, which were in good condition when they started, one was dead on arrival and another so injured that it died before the animals could be sold, will not, without more, establish negligence on the part of the carrier.—*Illinois Cent. R. Co. v. Peel, Miss., 70 So. 887.*

22. **Carriers of Passengers**—Alighting.—A passenger attempting, at her own initiative, to alight from a moving car before it has stopped to discharge passengers, takes the risk of injury.—*Clark v. Owensboro City R. Co., Ky., 182 S. W. 930.*

23.—Expulsion from Train.—Where a passenger, having lost his ticket, was given a reasonable time to find it, he may, on non-payment

of fare, be expelled from the train, though he proved that he once had a ticket by showing his baggage check.—*Adams v. Southern Ry. Co., S. C., 87 S. E. 1007.*

24.—Negligence.—Passenger stumbling over grip when speed of train was suddenly checked held not negligent as a matter of law in walking along the aisle for a necessary purpose, though the aisle was obstructed by grips.—*Abernathy v. Lusk, Mo. App., 182 S. W. 1049.*

25.—Rules and Regulations.—Where a railroad company changed its rules and refused to receive passengers on an excursion train at flag stations, where they could not obtain tickets, one thus excluded cannot complain.—*Gulf & S. I. R. Co. v. Dixon, Miss., 70 So. 898.*

26. **Chattel Mortgages**—Antecedent Debt.—One who takes a mortgage to secure an antecedent debt is a "purchaser for value" within the registration laws.—*Bank of Colerain v. Cox, N. C., 87 S. E. 967.*

27. **Commerce**—Foreign Corporation.—A sale of goods by a foreign corporation to a resident, through the corporation's non-resident broker, held interstate commerce, and the corporation could sue without first complying with the law of the state.—*Dinuba Farmers' Union Packing Co. v. J. M. Anderson Grocer Co., Mo. App., 182 S. W. 1036.*

28.—Workmen's Compensation Act.—The Workmen's Compensation Act, in its application to interstate commerce by water, does not interfere with interstate commerce; Congress not having legislated on that subject.—*Lindstrom v. Mutual S. S. Co., Minn., 156 N. W. 669.*

29. **Constitutional Law**—Taxation.—The Michigan law, establishing the rate of taxation of shares of stock in a corporation at the full value of all the shares, and not of the proportionate value of the corporation property within the state, does not violate the federal constitution, as taking property without due process of law.—*Welch v. Burrill, Mass., 111 N. E. 774.*

30. **Contracts**—Public Policy.—The mere fact that a litigant agrees in advance to pay the expenses of a lawsuit is not sufficient to brand the contract as being against public policy, since that does not conclusively show a lack of good faith.—*Cone v. Gilmore, Ore., 155 Pac. 192.*

31. **Copyrights**—Infringement.—Under equity rule 37 (198 Fed. xxviii, 115 C. C. xxviii), licensee of right to produce copyrighted drama on the stage held not proper party to suit for infringement by production of motion picture play.—*Tully v. Triangle Film Corp., U. S. D. C., 229 Fed. 297.*

32. **Corporations**—Reorganization.—Where a gas company, after an explosion causing damages, conveys all its property to a new corporation under circumstances warranting the conclusion that the new company is merely a continuation of the old, the injured person may recover against either corporation or both.—*Wolff v. Shreveport Gas, Electric Light & Power Co., La., 70 So. 789.*

33. **Covenants**—Restrictions.—Where deeds subjected property to the express condition that no building or structure of any kind or nature should be placed thereon, that it should be forever kept open and unobstructed for public use and enjoyment, that was insufficient to show that the restriction was for the benefit of subsequent purchaser from the vendor.—*Hobart v. Weston, Mass., 111 N. E. 779.*

34. **Damages**—Mitigating Loss.—A boarding house keeper against whom a writ of sequestration was wrongfully sued out, destroying her business, was under duty to use all reasonable means to secure another place in which to conduct a boarding house and thereby mitigate her loss.—*Hamlett v. Coates, Tex. Civ. App., 182 S. W. 1144.*

35. **Death**—Demurrer.—A petition in action by a father and mother for death of an unmarried minor son against his employer and an-

other railroad company having no connection with the employment, under the Employers' Liability Act, is demurrable for misjoinder of parties defendant.—*Western & A. R. Co. v. Smith*, Ga., 87 S. E. 1082.

36. **Deeds.**—Description.—Where there was an inconsistency in a deed, in that the boundaries of the land included a greater acreage than the deed recited was intended to be conveyed, the trial court, having found the fact, could treat the statement of the quantity as false; the description being sufficient without it.—*Standfer v. Miller*, Tex. Civ. App., 182 S. W. 1149.

37. **Divorce.**—Desertion.—Willful desertion for more than one year cannot exist as ground for divorce, where there is a justification for the separation in the consent of the alleged wronged party, given in a formal agreement of separation executed and acknowledged by him.—*Walker v. Walker*, Colo., 155 Pac. 332.

38.—Evidence.—There is no warrant in law for the introduction of an affidavit in evidence to establish ground for divorce.—*Johnson v. Johnson*, Ark., 182 S. W. 897.

39.—Jurisdiction.—That defendant has never resided in the state, and the cruel treatment relied on occurred outside the state, and the parties were not living together as husband and wife at the time thereof, will not prevent the courts of Minnesota from having jurisdiction to decree a divorce.—*Rose v. Rose*, Minn., 156 N. W. 664.

40. **Election of Remedies.**—Pleading and Practice.—Where insurer refused to pay the loss to the mortgagee and denied liability to the mortgagor, and the mortgagee was forced to resort to litigation to establish liability, the insurer could not after judgment reverse its attitude and demand that the judgment be taken out of plaintiff's security.—*Merriam Mortgage Co. v. St. Paul Fire & Marine Ins. Co.*, Kan., 155 Pac. 17.

41. **Eminent Domain.**—Abutting Owner.—In abutting owner's action against city for damages from regrading of street, the measure was the difference between the market value of the property just before it became known that the regrading was to be done and its market value after the work had been done.—*City of Dayton v. Rewald*, Ky., 182 S. W. 931.

42.—Taking of Property.—Where physical connection between switchboards of competing telephone companies was directed and patrons of one company using the line of the other were required to make compensation, neither company can be said to have taken the property of the other without compensation.—*Wisconsin Telephone Co. v. Railroad Commission of Wisconsin*, N. D., 156 N. W. 614.

43. **Equity.**—Adequate Remedy.—Where mandamus affords full relief in compelling affirmative action sought by injunction, there is adequate remedy at law within principle that equity will not interfere where such remedy exists.—*Southern Leasing Co. v. Ludwig*, N. Y., 111 N. E. 470.

44. **Estoppel.**—Elements of.—There is no estoppel unless the person claiming it relies on the conduct and will be prejudiced if the other party is permitted to assert his legal right.—*Stevens v. Blood*, Vt., 96 Atl. 697.

45. **Executors and Administrators.**—Claim.—In an action against an administrator, plaintiff was not confined to bare fact that stock was delivered to her as a gift, but was entitled to show corroborating circumstances as affecting the probability of her claim.—*Ghillan's Estate*, Vt., 96 Atl. 704.

46.—Principal and Agent.—Neither the surviving husband as sole heir, nor the administrator, if any, could legally bind the estate as to creditors by agreement to settle a claim against the estate by promising to pay a stipulated amount from the estate on condition that the personal property should be valued at a certain amount.—*Dunn v. Wallingford*, Utah, 155 Pac. 347.

47. **False Pretense.**—Remoteness.—In a prosecution for larceny by false pretense whereby defendants received money paid as a commission by the person defrauded, false pretenses inducing such payments held not too remote to be a

ground of criminal liability.—*Commonwealth v. Quinn*, Mass., 111 N. E. 405.

48. **Fixtures.**—Trade Fixtures.—Heating plant and area railing of hotel and saloon building held not trade fixtures.—*Levenson Wrecking Co. v. Hillebrand*, N. Y. Sup. Ct., 157 N. Y. Sup. 515.

49. **Frauds, Statute of.**—Lease.—Under the statute of frauds, a written authorization to an agent to execute a lease must express within its terms the intention of the owner to confer complete authority upon the agent.—*Salted v. Ives*, Cal., 155 Pac. 84.

50. **Guaranty.**—School District.—Trustees of a school district were not liable to the assignee of the contractor for a school building, who defaulted before completion, for the assigned amount of the contract price of the building, though they executed a guaranty that the amount advanced by the assignee for labor and materials should be repaid upon completion of the building out of the percentage of the contract price retained by them.—*Lynip v. Alturas School Dist. of Modoc County*, Cal. App., 155 Pac. 109.

51. **Husband and Wife.**—Suit by Wife.—A married woman cannot sue in her own name without joining her husband to recover community property, unless she has been abandoned by the husband.—*Hamlett v. Coates*, Tex. Civ. App., 182 S. W. 1144.

52. **Injunction.**—Action on Bond.—To authorize recovery on an injunction bond for expenses and attorney's fees in procuring dissolution of injunction, where payment is not shown, it must be shown that plaintiffs have incurred a fixed liability to pay.—*Felkner v. Winningham*, Okla., 155 Pac. 248.

53. **Insurance.**—Burden of Proof.—Where execution and delivery of the accident policy were admitted, the burden was on defendant to sustain its contention that statements made by insured by way of warranty were false.—*McEwen v. Occidental Life Ins. Co.*, Cal., 155 Pac. 86.

54.—Condition Precedent.—A provision of a policy that the loss "shall" be ascertained by appraisers held not to make an appraisal a condition precedent to a recovery, in the absence of a demand for appraisal, or to make it insured's duty to seek an appraisal.—*Goldberg v. Provident Washington Ins. Co.*, Ga., 87 S. E. 1077.

55.—Ultra Vires.—Where a fraternal association issued an insurance certificate payable to the fiancée of a member, although the purpose of insurance was to furnish protection for widow and orphans of members, association, having received the premiums, cannot avoid payment on the ground that it was ultra vires.—*Christenson v. El Riad Temple, Ancient Arabic Order Nobles of Mystic Shrine of Sioux Falls*, S. D., 156 N. W. 581.

56. **Intoxicating Liquors.**—Action by Wife.—Where a wife who supported her minor children died from an assault committed by her husband while drunk, held, that a child born after the assault could, after death of the mother, recover under Rev. St. 1913, § 3859, on liquor dealer's bond, for loss of means of support.—*Phair v. Dumond*, Neb., 156 N. W. 637.

57. **Landlord and Tenant.**—Waiver.—Where a landlord gave his tenant the right to sell a portion of the crop and collect the price, he waived his lien for rent, though the purchaser knew nothing of the arrangement.—*Norrid v. Garner*, Mo. App., 182 S. W. 1025.

58. **Libel and Slander.**—Candidate for Office.—Where a voter acts in good faith in stating to other voters his belief as to the fitness of a candidate for office, he is not liable in damages for expressing to the voters such belief.—*Estelle v. Daily News Pub. Co.*, Neb., 156 N. W. 645.

59. **Licenses.**—Jitneys.—An ordinance held not invalid on the ground that it imposed on persons operating jitney busses a much larger license fee than imposed on persons operating taxicabs.—*Hazleton v. City of Atlanta*, Ga., 87 S. E. 1043.

60. **Limitation of Actions.**—Tolling Statute.—Where plaintiff, indebted to defendant for merchandise, asked defendant to sell goods to a third person and charge the same to plaintiff, payment by the third person did not stop the

running of limitations on the account against plaintiff.—*Earls v. Earls*, Mo. App., 182 S. W. 1018.

61. **Livery Stable and Garage Keeper—EstoppeL**—The liability of defendant, with whom automobile was left for repairs as bailee for hire, is not affected by owner's knowledge as to manner in which or place where property was kept.—*Stevens v. Stewart-Warner Speedometer Corp.*, Mass., 111 N. E. 771.

62. **Malicious Prosecution—Probable Cause.**—That one causing another's arrest believed that probable cause existed, does not necessarily exempt him from liability for malicious prosecution.—*Tucker v. Bartlett*, Kan., 155 Pac. 1.

63. **Marriage—Duress.**—A marriage taking place through fear of, or to stop, a prosecution for seduction, will not be set aside for duress.—*Gass v. Gass*, Tex. Civ. App., 182 S. W. 1195.

64. **Master and Servant—Assumption of Risk.**—The mere failure of a section man to inspect a hand car before using it does not as a matter of law establish assumption of risk by reason of defects in the car.—*Vandalla R. Co. v. Parker*, Ind. App., 111 N. E. 637.

65. **Directory Statute.**—Act April 1, 1913 (P. L. 302), providing that the determination in workmen's compensation cases should be filed within 30 days after the final hearing, is directory only.—*Diskon v. Bubbs*, N. J. Sup. Ct., 96 Atl. 669.

66. **Disease.**—Where an employee, after an injury received in the course of his employment, developed paralysis, paresis, and insanity, he was entitled to compensation, though previous to the injury the diseases had been present, but latent, and did not impair his ability to work.—*Crowley v. City of Lowell*, Mass., 111 N. E. 756.

67. **Pleading.**—A complaint, though stating cause of action under the Federal Employers' Liability Act, § 4, held insufficient in not negating assumption of risk.—*Cincinnati, H. & D. Ry. Co. v. Gross*, Ind. App., 111 N. E. 653.

68. **Workmen's Compensation Act.**—Under the Workmen's Compensation Act, § 18, providing that want of notice shall not bar proceedings if the subscriber had knowledge of the injury, where an injured employee gave notice to his foreman, and a report of the injury was filed by the subscriber, the proceedings of the employee for compensation were not barred by his failure to notify the employer.—*In re McLean*, Mass., 11 N. E. 783.

69. **Workmen's Compensation Act.**—Under Workmen's Compensation Law providing compensation for injuries by employees in hazardous employment, specifying as such the operation of horse-drawn vehicles, a stable employee, injured when a horse which he was removing from its stall fell on him, was entitled to compensation.—*Costello v. Taylor*, N. Y., 111 N. E. 755, 217 N. Y. 179.

70. **Mortgages—Marital Rights.**—Where in suit to foreclose mortgage made by a wife, the husband entered plea disclaiming interest in the real estate, he renounced marital rights in property, rendering transaction an equitable mortgage by the wife.—*Osha v. Higgins*, Vt., 96 Atl. 700.

71. **Municipal Corporations—Highways.**—Cities or towns are liable for defects in highways, though not expressly made so by statute.—*City of Montgomery v. Ross*, Ala., 70 So. 634.

72. **Liens.**—That a municipal lien includes railroad property not lienable does not invalidate it as to lienable property.—*South Fork Borough v. Pennsylvania R. Co.*, Pa., 96 Atl. 710.

73. **Notice of Defect.**—Where a street is being repaired and open for travel and the placing of a grading pin therein was under the direction of the town officials in charge, the question of notice of the defect does not arise.—*McCarthy v. Inhabitants of Town of Stoneham*, Mass., 111 N. E. 698.

74. **Navigable Waters—Riparian Owner.**—A riparian owner may acquire title by accretion though the accretion is influenced by artificial causes in which he had no part.—*Adams v. Roberson*, Kan., 155 Pac. 22.

75. **Negligence—Elements of.**—Negligence in the operation of a steam shovel resulting in

burning property may consist in the use of one improperly constructed or not in good order, or not supplied with suitable fixtures to prevent fire, or in failure to exercise the care of skillful, prudent and discreet persons under like circumstances, due care depending in every case on the surrounding circumstances.—*American Paving & Contracting Co. v. Davis*, Md., 96 Atl. 623.

76. **Wantonness and Recklessness.**—A complete indifference to consequences distinguishes wrongs caused by wantonness and recklessness from torts arising from negligence.—*Freeman v. United Fruit Co.*, Mass., 111 N. E. 789.

77. **Pardon—Recovery of Fine Paid.**—When pardon issues to one convicted of a crime, after the fine has been paid to the treasurer of the board of education, as required by statute, the amount paid cannot be recovered.—*Byrum v. Turner*, N. C., 87 S. E. 975.

78. **Partnership—Elements of.**—Agreement between plaintiff and defendant, as to business in which they were about to engage, to share equally as to ownership, profits, and expenses and to organize a company to carry on the business, held to create a partnership.—*Arnold v. Maxwell*, Mass., 111 N. E. 687.

79. **Surviving Partner.**—A surviving partner is entitled to the exclusive possession and control of the partnership property, with the right to sell and dispose of it as far as is necessary and proper to close up the partnership business and discharge the claims of partnership creditors.—*Lewis v. Lewis*, Iowa, 156 N. W. 332.

80. **Patents—Ex Parte Application.**—As patents are procured ex parte, the public is not bound by them, but the patentees are.—*Thacher v. Transit Const. Co.*, U. S. D. C., 228 Fed. 905.

81. **Patentability.**—A change in an old machine or instrument, which so affects its operation and construction as to adapt it to a new use, is patentable.—*Tate v. Baltimore & O. R. Co.*, U. S. C. C. A., 229 Fed. 141.

82. **Principal and Agent—Implied Power.**—An agent authorized to conduct a business involving the making of working contracts has implied power to promise to pay for supplies furnished by a stranger to contractors for the work and necessary thereto.—*Channell Bros. v. West Virginia Pulp & Paper Co.*, W. Va., 87 S. E. 876.

83. **Scope of Agency.**—The words "we hereby authorize you to negotiate a lease" did not authorize an agent to execute a lease in the owner's name.—*Salter v. Ives*, Cal., 155 Pac. 84.

84. **Scope of Agency.**—Ordinarily the power to sell property includes the right to receive payments.—*Norrid v. Garner*, Mo. App., 182 S. W. 1025.

85. **Principal and Surety—Contract of Suretyship.**—Where one agrees to become another's agent to take from him and pay for certain goods at a certain price, and simultaneously a third person signs an agreement annexed to the contract assuming responsibility for any debt incurred by the agent to the principal, the third person's liability is that of surety.—*McClain v. Georgian Co.*, Ga. App., 87 S. E. 1090.

86. **Railroads—Mandamus.**—An order of the railroad commissioners requiring the construction of a depot of wood will not be enforced by mandamus, where it appears that the effect of an ordinance prohibiting the erection of structures except from fireproof material was not considered by the commissioners.—*State v. Atlantic Coast Line R. Co.*, Fla., 70 So. 941.

87. **Receivers—Appointment.**—Rights of receiver become fixed at date of appointment, and liens and priorities acquired before appointment will not be disturbed.—*P. E. Payne Hardware Co. v. International Harvester Co.*, Miss., 70 So. 892.

88. **Removal of Causes—Federal Employers' Liability Act.**—Under the Federal Employers' Liability Act (Act April 22, 1908, § 6, as amended by Act April 5, 1910, § 1), prohibiting removal of causes under the act, where defendant railroad's petition for removal alleged that the allegation in its employee's petition of his engagement in interstate commerce when injured was fraudulently made, the case did not stand removed to the federal court, and the state court

could try the question of fraudulent allegation of jurisdictional facts.—*Chesapeake & O. Ry. Co. v. Shaw, Ky.*, 182 S. W. 653.

89.—**Removability.**—A suit arising under a law of the United States is no less removable because the law involved has already been decided, construed, and settled.—*Alabama Great Southern Ry. Co. v. American Cotton Oil Co.*, U. S. C. C. A., 229 Fed. 11.

90.—**Removability.**—Where counts for same injury were alleged under Federal Employers' Liability Act and under common law and state statutes, action held removable, notwithstanding Employers' Liability Act, § 6.—*Flas v. Illinois Cent. R. Co.*, U. S. D. C., 229 Fed. 319.

91.—**Sales.**—Contract.—Defendants' bill of sale to 175 head of horses, described as being from three to eight years old, weighing 900 pounds and up, sound and free from blemishes and diseases of all kinds, was not merely a sale to plaintiffs or defendants' claim to horses running wild on the range, but purported to be a sale of the horses themselves.—*Lindsey v. Ritchey, Ark.*, 182 S. W. 901.

92.—**Contract.**—Where seller by letter offered fine stock cabbages, and by telegram Danish cabbages, and acceptance referred to letter, the contract was for fine stock cabbages.—*Paddleford v. Lane & Co., Mass.*, 111 N. E. 769.

93.—**Contract.**—Where a contract for the sale of potatoes required their delivery in sacks, the sacks to be furnished by the buyer, and he failed to furnish them, he could not thereafter recover for breach of contract when the seller sold the potatoes to another party.—*Wm. B. Hughes Produce Co. v. Pulley, Utah*, 155 Pac. 337.

94.—**Rescission.**—Where the buyer rescinds for fraud and offers to return the property, he need not, on the seller's refusal to receive the property, keep it until termination of the controversy, but may either retain it as the seller's agent or, after notice, sell it for his account.—*Houze v. Blackwell, Ga.*, 87 S. E. 1054.

95.—**Statutes.**—Construction.—The term "workmen" in the title to Workmen's Compensation Law was used in its generic sense, and included employees in the county as well as individuals.—*Lewis and Clark County v. Industrial Acc. Board of Montana, Mont.*, 155 Pac. 268.

96.—**Street Railroads.**—Pleading.—Petition in action against street railway company for damages to automobile in collision, which alleges that street railway company improperly and unskillfully handled car, raises question of failure to keep lookout.—*Ohio Valley Mills v. Louisville Ry. Co., Ky.*, 182 S. W. 955.

97.—**Pedestrian.**—A pedestrian, who is deaf, must, when on a street on which cars are operated, use her sense of sight to a greater extent than if her hearing were good to protect herself from injury.—*Brereton v. Milford & U. St. Ry. Co., Mass.*, 111 N. E. 715.

98.—**Sunday.**—Statutory Violation.—Defendant, who gave his moving picture show on a Sunday without charging admission, but invited patrons to pay what they wished, and who deducted his day's expenses from the receipts and turned over the balance to charity as advertised, held to violate the Sunday statute.—*Spooner v. State, Tex. Cr. App.*, 182 S. W. 1121.

99.—**Telegraphs and Telephones.**—Delivery of Message.—It is the duty of a telegraph company, receiving a message at a terminal office and being unable to find the addressee after diligent search, to notify the sender to furnish a better address.—*Johnson v. Western Union Telegraph Co., N. C.*, 87 S. W. 992.

100.—**Measure of Damages.**—Vendor's measure of damages for telegraph company's wrong transmission of price quotation, where accepted by buyer, with nothing to show that he would have accepted at correct price, is difference between correct price and what seller might elsewhere obtain by reasonable prudence and diligence, not exceeding difference between correct and incorrect price.—*Western Union Telegraph Co. v. Victor G. Bloede Co., Md.*, 96 Atl. 685.

101.—**Trade-Marks and Trade Names.**—Unfair Competition.—Party selling beverage under name of plaintiff's product and using plaintiff's labels, etc., held guilty of unfair competition, and to be enjoined, though using syrup manu-

factured by plaintiff, but not authorized to use it in that way.—*Coca-Cola Co. v. J. G. Butler & Sons, U. S. D. C.*, 229 Fed. 224.

102.—**Trusts.**—Dry Trust.—A deed conveying certain realty to C as guardian of minors, of a certain county, naming them, created a dry or passive trust, which would be executed as the minors respectively reached majority.—*Fleck v. Ellis, Ga.*, 87 S. E. 1055.

103.—**Garnishment.**—Where a will leaving property in trust for one for life expressly declared that the income should not be subject to his debts, such income cannot be garnished by the beneficiary's creditors.—*Safe Deposit & Trust Co. of Baltimore v. Independent Brewing Ass'n, Md.*, 96 Atl. 617.

104.—**Vendor and Purchaser.**—Rescission.—Where defendants rescinded a contract for the exchange of lands and personality on the ground of plaintiff's delay in performance, their right to rescind is not affected because it was agreed that defendants should pay plaintiff a small sum of money in respect to some of the personal property.—*Rector v. Lewis, Cal.*, 155 Pac. 75.

105.—**Sale in Gross.**—Where a tract of land was sold by the acre, the purchaser is liable to pay for land included in a highway, as he would own the fee, and the highway was not an incumbrance.—*Manlove v. Lemmon, Ill.*, 111 N. E. 739.

106.—**Waters and Water Courses.**—Act of God.—A flood, due to a rain no greater than had fallen "many a time before" within a man's experience, is not such an act of God as will excuse one who has changed the natural course of a stream into a new channel which is inadequate to carry off its waters, as an "act of God" is an irresistible superhuman cause not to be anticipated.—*Garrett v. Beers, Kan.*, 155 Pac. 2.

107.—**Surface Waters.**—Though waters overflowing the bank of a stream are to be considered as surface waters, yet if such overflow is caused by one who negligently obstructs the natural course of the stream he is liable for any loss that ensues.—*Hoelscher v. Missouri, K. & T. Ry. Co., Mo. App.*, 182 S. W. 1078.

108.—**Wills.**—Construction.—Where property is devised to one for life with remainder to another, and, if the remainderman die without issue, then to a third person, the limitation as to dying without issue is restricted to the death of the remainderman before termination of life estate.—*White v. White's Guardian, Ky.*, 182 S. W. 942.

109.—**Execution.**—Any acknowledgment by testator of his signature in the presence of witnesses is sufficient; it not being essential that the acknowledgment be in any particular verbal formula, but being permissible to infer an acknowledgment from conduct, though the witnesses did not see the signature.—*Shewmake v. Shewmake, Ga.*, 87 S. E. 1046.

110.—**Fraud.**—The existence of a fiduciary relation on the part of those securing probate of a will is not essential to the making of a sufficient case of extrinsic fraud to warrant a court in equity in charging the executors, etc., with a trust in favor of the defrauded parties and setting aside the judgment of probate.—*Nicholson v. Leatham, Cal.*, 155 Pac. 93.

111.—**Holographic.**—Paper purporting to be will of husband and wife, in handwriting of husband except the wife's signature, dated, and showing the place where made, found after the death of the husband without issue, leaving wife surviving, among his valued papers, held entitled to probate as his "holographic will."—*In re Cole's Will, N. C.*, 87 S. E. 962.

112.—**Next of Kin.**—"Next to kin," in the legal and common meaning of the words as used in wills means nearest of blood relations, and does not include a brother's wife.—*Bailey v. Smith, Mass.*, 111 N. E. 684.

113.—**Power of Appointment.**—Where testator left his property to his wife for life, with full power of disposition during her life, the widow could not defeat the right of the remaindermen by selling the devised property and investing the proceeds in other property, whether intentionally or through misinterpretation of the will.—*Rives v. Burrage, Miss.*, 70 So. 893.